

718

<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)</b>		Docket Number (Optional)
First Named Inventor:	Michael Strobel	Art Unit: 1614
Application Number:	09/801,908	Examiner: Raymond J. Henley III
Filed:	March 9, 2001	
Title:	Ketoprofen Powder for Oral Use	
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9382.		
The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.		
APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION. NOTE: A grantable petition requires the following items: (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay.		
1. Petition fee		
<input checked="" type="checkbox"/> Small entity - fee \$ <u>55.00</u> (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.		
<input type="checkbox"/> Other than small entity - fee \$ _____ (37 CFR 1.17(l)).		
2. Reply and/or fee		
A. The reply and/or fee to the above-noted Office action in the form of <u>Amendment and Response</u> (identify the type of reply):		
<input type="checkbox"/> has been filed previously on _____.		
<input checked="" type="checkbox"/> is enclosed herewith.		
B. The issue fee of \$ _____		
<input type="checkbox"/> has been filed previously on _____.		
<input type="checkbox"/> is enclosed herewith.		

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

January 7, 2004  
Date

33, 771  
Registration Number, if applicable

John W. Ryan  
Signature

John W. Ryan  
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

(Please attach additional sheets if additional space is needed.)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors: Michael Strobel et al.

Serial No.: 09/801,908

Art Unit: 1614

Filed: March 9, 2001

Examiner: Raymond J. Henley

For: KETOPROFEN POWDER  
FOR ORAL USE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**STATEMENT REGARDING UNAVOIDABLE ABANDONMENT**

Sir:

I, John W. Ryan hereby declare and state as follows:

1. I am attorney of record in the above captioned U.S. patent application.
2. On November 6, 2002 an Office Action was issued by Primary Examiner Raymond J. Henley III in the above captioned U.S. patent application and mailed to my former firm. (Exhibit A).
3. A response to the Office Action of November 6, 2002 was filed, along with the appropriate petition and fee for a three month extension of time and Declaration under 37 C.F.R. 1.132, on May 5, 2003. (Exhibit B).

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4. On June 18, 2003 a Power of Attorney and Change of Correspondence were filed with the United States Patent and Trademark Office in the above captioned application. A Notice of Acceptance of Power of Attorney was issued by the United States Patent and Trademark Office on July 24, 2003. (Exhibit C).

5. Because no action subsequent to the response filed May 5, 2003 was received in the above captioned application at my current and, upon information and belief, at my former firm, a Status Inquiry in the above captioned application was filed with the United States Patent and Trademark Office on July 31, 2003 (Exhibit D)

6. On November 18, 2003 I had a telephone discussion with Primary Examiner Raymond J. Henley III in which we discussed the status of the above captioned application. During this discussion, Primary Examiner Henley said that an action was issued in the application on May 16, 2003. This action indicated that the May 5, 2003 response was held non-responsive and apparently gave a one month period for response. Neither I nor my prior law firm of Wilmer, Cutler & Pickering received this action and I indicated same to the Examiner. (Exhibit E)

7. On November 20, 2003 a notice of abandonment was issued in the above captioned application. (Exhibit F)

8. Without the knowledge that a subsequent action had been issued in the above captioned application it was impossible to appropriately respond to said action. Thus, the abandonment of U.S. Patent Application 09/801,908 was unavoidable.

9. I further declare that all statements made herein are of my own knowledge, are, are true and that statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 100 of Title 18 of the United States Code, and that such false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

DECHERT LLP

Date: January 7, 2004

John W. Ryan

John W. Ryan  
Reg. No. 33,771

Dechert LLP  
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DAC

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Approved for use through 08/30/2003. OMB 0651-0031  
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/801,908
	Filing Date	March 9, 2001
	First Named Inventor	Strobel, et al.
	Art Unit	1614
	Examiner Name	Raymond J. Henley
Total Number of Pages in This Submission	Attorney Docket Number	833970.0002

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input checked="" type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <i>Petition to Revoke</i>
<b>Remarks</b> Petition to revive under 1.137(a) and statement regarding unavoidable abandonment		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	John W. Ryan, Reg. No. 33,771
Signature	<i>John W. Ryan</i>
Date	<i>January 7, 2004</i>

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name			
Signature		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

7590

11/06/2002

John W. Ryan  
WILMER CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, DC 20037-6000

EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 11/06/2002

*Response Due: 2-6-03*

Please find below and/or attached an Office communication concerning this application or proceeding.

**DOCKETED**

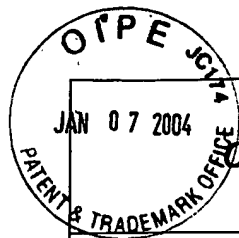
*11-8-02 HMF*

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JAN 09 2004

**OFFICE OF PETITIONS**





# Office Action Summary

Application No. <b>09/801,908</b>	Applicant(s) <b>Michael Strobel, et al.</b>	
Examiner <b>Ray Henley</b>	Art Unit <b>1614</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 30, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

USPTO-7  
Received copy of

Office action mailed November 6, 2002 RA

Application/Control Number: 09/801,908

Page 2

Art Unit: 1614

**CLAIMS 1-11 AND 13-20 ARE PRESENTED FOR EXAMINATION**

Applicants' Request for Continued Examination (RCE) and Amendment filed September 30, 2002 have been received and entered into the application. The RCE is deemed to be proper and thus examination on the merits is detailed below. As per applicants' amendment, claim 1 has been amended and claim 12 has been canceled. In light of applicants' amendment, the rejections of the claims under 35 U.S.C. § 102(b), as set forth in the previous Office action dated June 28, 2002 at pages 2-4, are withdrawn.

***Claim Rejection - 35 USC § 112, Second Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-11 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-11 depend from newly amended claim 1, but fail to be consistent with such amendment which changed claim 1 from being a claim directed to a composition to one directed to a method. Such inconsistency renders the claims indefinite. Appropriate correction is required.

Application/Control Number: 09/801,908

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Art Unit: 1614

Also, claims 4 and 16 are directed to "a flavoring agent" but improperly depend from a claim which is not directed to a flavoring agent, but rather to a composition.

***Claim Rejection - 35 USC § 103***

*I* Claims 1, 5-11, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dondi et al. (U.S. Patent No. 5,624,682), already of record, for the reasons of record as set forth in the previous Office action dated June 28, 2002 at page 4, as applied to claims 1, 5-13 and 17.

Applicants arguments at page 5 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicants have argued that the compositions would not be useful for the treatment of livestock animals because only small amounts of water are disclosed by the patentees and would precipitate out of a large water solution as contemplated by the current invention. However, Dondi et al. do teach "animals" in general as previous pointed out by the Examiner. Applicants' allegation of precipitation problems has not been established by a showing of fact. Finally, the total volume of the solution is not a claim limitation and thus is not a limitation of any moment.

*II* Claims 13-20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Daher (U.S. Patent No. 5,348,745), already of record, for the reasons of record as set forth in the previous Office action at page 5.

Application/Control Number: 09/801,908

Page 4

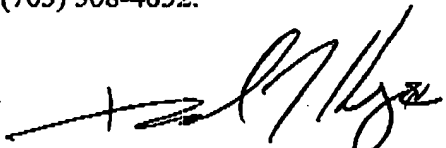
Art Unit: 1614

Applicants' arguments at page 5 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination. The arguments are directed to the limitations of claim 1, however, this claim is not rejected over Daher.

Accordingly, for the above reasons, the claims are deemed to remain properly rejected and none of the claims are allowed.

Applicants should note that claims 2-4, to the extent that the Examiner interprets them as depending from a method claim, i.e., claim 1, are not subject to any rejection based on prior art. Neither of the references relied upon by the Examiner would teach or have suggested the limitations as in these claims. In particular, the solution taught by Daher is an intermediate product and would not be administered to a subject for any therapeutic purpose, i.e., the solution is converted into a powder for use in preparing a tablet. Thus, Daher is not applicable to any of claims 1-11. The solution taught by Dondi et al. is intended to be encapsulated and the patentees do not teach or suggest that a flavoring agent should be present. Thus, Dondi et al. is not applicable to claims 2-4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.

  
RAYMOND HENLEY, III  
PRIMARY EXAMINER  
GROUP 1200

Please type a plus sign (+) inside this box ☐

PTO/SB/82 (10-00)

Approved for use through 10/31/2002. OMB 0651-0035

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/801,908
	Filing Date	03/09/2001
	First Named Inventor	Michael Strobel
	Art Unit	1614
	Examiner Name	Henley III, Raymond J
Total Number of Pages in This Submission	Attorney Docket Number	833970.0002

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input checked="" type="checkbox"/> Amendment/Reply  <input type="checkbox"/> After Final  <input checked="" type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input checked="" type="checkbox"/> Petition for 3 month extension  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <b>Check in the amount of \$465.</b>
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual	John W. Ryan Reg. No. 33,771
Signature	<i>John W. Ryan</i>
Date	May 5, 2003

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washing, DC 20231 on this date: <input type="text"/>	
Typed or printed	<input type="text"/>
Signature	<input type="text"/>
Date	<input type="text"/>

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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Docket No. 833970.0002

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: STROBEL et al.

Serial No.: 09/801,908

Group Art Unit: 1614

Filed: 03/09/2001

Examiner: Henley, Raymond J. III

For: KETOPROFEN POWDER FOR ORAL USE

U.S. Patent & Trademark Office  
2011 South Clark Place  
Customer Window  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

**AMENDMENT AND RESPONSE UNDER 37 CFR §1.111**

Dear Sir:

This amendment is filed in response to the Office Action dated November 6, 2002. A petition for a 3 month extension of time and the requisite fee accompanies this response. Also, the Commissioner is hereby authorized to charge Deposit Account No. 04-0480 should additional fees be necessary for consideration of this paper. In reply to the Office Action, please amend the application as follows:

**IN THE CLAIMS**

Claim 1 (previously amended): A method for the analgesic treatment of a livestock animal comprising administering to said animal a pharmaceutically effective amount of a palatable solution of ketoprofen and an oral base in water.

Claim 2 (currently amended): The [pharmaceutical solution] method of claim 1, wherein the [edible] base is selected from the group consisting of sodium bicarbonate, sodium chloride, potassium chloride, sodium sulfate, and potassium sulfate.

Claim 3 (currently amended): The [pharmaceutical solution] method of claim 1, further comprising the addition of a flavoring agent.

Claim 5 (currently amended): A method for the treatment of rheumatoid arthritis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 6 (currently amended): A method for the treatment of osteoarthritis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 7 (currently amended): A method for the treatment of ankylosing spondylitis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 8 (currently amended): A method for the treatment of acute gouty arthritis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 9 (currently amended): A method for the treatment of acute tendinitis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 10 (currently amended): A method for the treatment of bursitis in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 11 (currently amended): A method for the treatment of primary dysmenorrhea in an animal comprising administering to said animal a pharmaceutically effective amount of [the ketoprofen solution of claim 1] a palatable solution of ketoprofen and an oral base in water.

Claim 12 (previously cancelled)

Claim 13 (currently amended): A [pharmaceutical solution comprising] method for the analgesic treatment of an animal comprising administering to said animal a pharmaceutically effective amount of ketoprofen and an edible weak base, wherein ketoprofen is present in an amount of 1-10% by weight of [the] a solution and wherein the edible base is present in an amount no greater than about 90% by weight of [the] a solution.

Claim 14 (currently amended): The [pharmaceutical solution] method of claim 13, wherein the edible weak base is selected from the group consisting of sodium bicarbonate, sodium chloride, potassium chloride, sodium sulfate, and potassium sulfate.

Claim 15 (currently amended): The [pharmaceutical solution] method of claim 13, further comprising the addition of a flavoring agent.

Claim 17 (currently amended): [The pharmaceutical solution] A method for the analgesic treatment of an animal comprising administering to said animal a pharmaceutically effective amount [comprising] of ketoprofen and an edible weak base, wherein ketoprofen is present in an amount of 10-20% by weight of [the] a solution and wherein the edible base is present in an amount no greater than about 80% by weight of [the] a solution.

Claim 18 (currently amended): The [pharmaceutical solution] method of claim 17, wherein the edible weak base is selected from the group consisting of sodium bicarbonate, sodium chloride, potassium chloride, sodium sulfate, and potassium sulfate.

### **REMARKS**

Favorable reconsideration of this application is requested. Applicants have now amended 2-11, 13-15, and 17-18. Claims 1-11 and 13-20 remain pending in the application. A declaration under 37 CFR §1.132 by Dr. Michael A. Strobel is also submitted to show the precipitation problems inherent with the Dondi et al. reference.

### **35 USC §112, Second Paragraph Rejection**

Claims 2-11 and 16 stand rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. As amended, the claims are directed to a method of use as opposed to the composition. Thus, applicants respectfully request that this rejection now be removed.

### **35 USC §103 Rejection in view of Dondi et al.**

Claims 1, 5-11, 13, and 17 stand rejected under 35 USC §103 (a) as being unpatentable over Dondi et al. (U.S. Patent No. 5,624,682). This rejection is respectfully traversed.

As shown in the accompanying Rule 132 Declaration, Dondi et al. actually teaches away from Applicants' invention because of the precipitation problems that are inherent therein. When examples were conducted using the teachings of Dondi et al. precipitations occurred that would severely limit their use as a water based carrier system for ketoprofen.

Dondi et al. fails to teach, provide motivation, or disclose any suggestion related to a method to one of ordinary skill in the art a method of forming an oral, palatable, stable, and safe solution of ketoprofen and an oral base in water for use in the mass administration to animals

Accordingly, applicants request the removal of the rejection based on 35 USC §103.



35 USC §103 Rejection in view of Daher

Claims 13-20 stand rejected under 35 USC §103 as being unpatentable over Daher (U.S. Patent No. 5,348, 745). The claims as now amended are directed to the method of use as opposed to the compound itself.

Daher is directed to the formulation of a tablet comprising an edible organic acid. Daher contains no teaching of a pharmaceutical solution for administration to animals. Moreover, there is no teaching, suggestion or motivation in Daher for the method of use now claimed, i.e., a method to one of ordinary skill in the art a method of forming an oral, palatable, stable, and safe solution of ketoprofen and an oral base in water for use in the mass administration to animals.

In any event, Applicants maintain that the Office Action has not established a prima facie case for a 35 USC §103 case.

Applicants respectfully request that this rejection now be withdrawn on either of the above-identified basis.

Conclusion

As all of the outstanding rejections have been addressed and all of the claims are now believed to be in condition for allowance, Applicants respectfully invite the Examiner to contact the undersigned representative should any further issue arise.

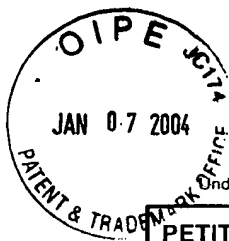
Respectfully submitted,

DECHERT LLP

Date: May 5, 2003

John W. Ryan

John W. Ryan  
Reg. No. 33,771  
Dechert LLP  
1775 I Street, N.W.  
Washington, DC 20006-2401  
Telephone No. (202) 261-3375



<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)</b>		Docket Number (Optional) <b>833970.0002</b>
In re Application of <b>Michael Strobel et al.</b>		
Application Number <b>09/801,908</b>		Filed <b>03/09/2001</b>
For <b>KETOPROFEN POWDER FOR ORAL USE</b>		
Art Unit <b>1614</b>	Examiner <b>Henley III, Raymond</b>	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

- ☐ One month (37 CFR 1.17(a)(1)) \$ \_\_\_\_\_
- ☐ Two months (37 CFR 1.17(a)(2)) \$ \_\_\_\_\_
- ☒ Three months (37 CFR 1.17(a)(3)) \$ 465
- ☐ Four months (37 CFR 1.17(a)(4)) \$ \_\_\_\_\_
- ☐ Five months (37 CFR 1.17(a)(5)) \$ \_\_\_\_\_

- ☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ \_\_\_\_\_.
- ☒ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to change fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 04-0480.

I have enclosed a duplicate copy of this sheet.

- I am the ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71.  
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).
- ☒ attorney or agent of record.
- ☐ attorney or agent under 37 CFR 1.34(a).  
Registration number if acting under 37 CFR 1.34(a) \_\_\_\_\_.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

5/5/03  
Date

(202) 261-3375  
Telephone Number

John W. Ryan Reg. No. 33,771  
Signature

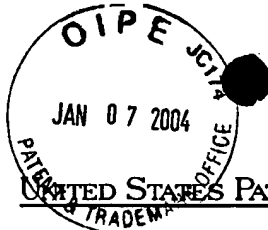
John W. Ryan  
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/801,908	03/09/2001	Michael Stroble	833970.0002

JOHN W. RYAN  
DECHERT LLP  
1775 I STREET, N.W.  
SUITE 1100  
WASHINGTON, DC 20006

CONFIRMATION NO. 2601



\*OC000000010474204\*

Date Mailed: 07/24/2003

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

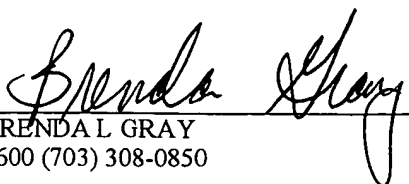
This is in response to the Power of Attorney filed 06/18/2003.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

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BRENDA L GRAY  
1600 (703) 308-0850

ATTORNEY/APPLICANT COPY

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JUL 28 2003

DECHERT LLP



7-179-333771

2.16

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Inventor(s):** Strobel, Michael

**Serial No.:** 09/801,908      **Examiner:** Raymond J. Henley III

**Filed:** March 9, 2001      **Group Art Unit:** 1614

**Title:** Ketoprofen Powder For Oral Use

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

**STATUS INQUIRY**

The above-identified patent application was filed on March 9, 2001, an Office Action was mailed to my former firm on November 6, 2002, and an Amendment and Response to the Office Action (along with a Rule 132 Declaration) was filed on May 5, 2003. A power of attorney transferring the case to my new firm was filed on June 16, 2003.

Please confirm that the request for transfer to the current mailing address was received and, if possible, inform us of when we may expect to receive a second office action or notice of allowance.

Respectfully submitted,

DECHERT LLP

Dated: July 31, 2003

John W. Ryan  
John W. Ryan  
Reg. No. 33,771

Dechert LLP  
1775 Eye Street, N.W.  
Washington, D.C. 20006  
Ph: (202) 261-3375  
Fax: (202) 261-3333

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# Examiner-Initiated Interview Summary

Application No.

09/801,908

Applicant(s)

STROBLE ET AL.

Examiner

Raymond J. Henley III

Art Unit

1614

All Participants:

JAN 07 2004

Status of Application: \_\_\_\_\_

(1) Raymond J. Henley III.

(3) \_\_\_\_\_

(2) John Ryan.

(4) \_\_\_\_\_

Date of Interview: 18 November 2003

Time: 2:30 pm ET

## Type of Interview:

☒ Telephonic

☐ Video Conference

☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

Exhibit Shown or Demonstrated: ☐ Yes ☒ No

If Yes, provide a brief description:

## Part I.

Rejection(s) discussed:

None

Claims discussed:

None

Prior art documents discussed:

None

## Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

*Applicant did not receive the Office action dated May 16, 2003. Application is abandoned. Applicant will petition to revive upon receipt of the present papers.*

## Part III.

- ☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.
- ☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

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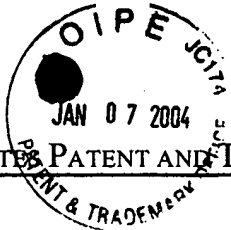
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(Examiner/SPE Signature)

(Applicant/Applicant's Representative Signature – if appropriate)



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

7590 11/20/2003  
JOHN W. RYAN  
DECHERT LLP  
1775 I STREET, N.W.  
SUITE 1100  
WASHINGTON, DC 20006

EXAMINER

HENLEY III, RAYMOND J

ART UNIT	PAPER NUMBER
----------	--------------

1614

DATE MAILED: 11/20/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Notice of Abandonment

Application No.

09/801,908

Examiner

Raymond J. Henley III

Applicant(s)

STROBLE ET AL.

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 May 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

\* Note attached Interview Summary (1 page)

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Raymond J. Henley III  
Primary Examiner  
Art Unit: 1614

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.